

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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O'KEITH LEWIS, JR.,

Plaintiff,

-against-

NASSAU COUNTY, NASSAU COUNTY
CORRECTIONAL CENTER, NASSAU
COUNTY SHERIFF'S DEPARTMENT,
OFFICER MANKOWSKI, SERGEANT
McGOVERN, and JOHN DOES SHERIFF'S
AND SUPERVISORS,

Defendants.

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APPEARANCES:

LAW OFFICES OF PAMELA S. ROTH, ESQ.
Pamela Susan Roth
9118 Fifth Avenue
Brooklyn, NY 11209
Attorney for Plaintiff

COUNTY OF NASSAU
OFFICE OF THE COUNTY ATTORNEY
By: Diane C. Petillo, Esq.
One West Street
Mineola, NY 11501-4820
Attorney for Defendants

WEXLER, District Judge:

Plaintiff O'Keith Lewis brings this action under 42 U.S.C §§ 1983 and 1985 claiming violations of his constitutional rights under the First, Fourth, Fifth, Eighth and Fourteenth Amendments of the U.S. Constitution, and the constitution and laws of New York State, in connection with events that occurred on August 10, 2011 while in the care and custody of the Nassau County Correctional Center. Pursuant to a court-ordered briefing schedule, Defendants

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filed a motion to dismiss on February 20, 2014 pursuant to Federal Rules of Civil Procedure (“F.R.Civ.P.”), Rule 12(b)(6). According to the briefing schedule submitted by the parties, Plaintiff was to submit an opposition to Defendants’ motion by November 27, 2013, which Plaintiff did not do. In their motion, Defendants argue, *inter alia*, that Plaintiff be collaterally estopped from bringing this action because of a similar action brought *pro se* before another Judge of this court that was dismissed with prejudice for failure to prosecute (see Lewis v. Nassau Co. Jail, et al., 11-CV-4242 (JS)(ARL), docket entry 12). Defendants here also argue that Plaintiff’s failure to comply with the discovery orders of the Magistrate Judge in this case warrant dismissal of the action.

On April 10, 2014, all counsel appeared for a conference before this Court. At that time, the Court permitted Plaintiff’s counsel until April 24, 2014 to submit an opposition to Defendants’ motion, and all counsel were directed to the Magistrate Judge to complete discovery on an expedited basis. Counsel were also reminded of the June 2, 2014 trial date, which was originally set on September 5, 2013. See Docket entries of April 10, 2014.

On May 28, 2014, a pre-trial conference was held before Magistrate Judge Wall in preparation for the June 2, 2014 trial date. Plaintiff’s counsel failed to appear. In the minute entry for that conference, Judge Wall noted “Plaintiffs counsel has, once again, failed to appear, has failed to file any opposition to defendants pending motion, has not conducted any discovery, and has failed to submit a joint proposed pretrial order. Judge Wexler has set a June 2, 2014 trial date. This court respectfully recommends that Judge Wexler dismiss the action and impose sanctions on plaintiffs counsel.”

This Court agrees with Magistrate Judge Wall’s recommendation that this case be dismissed. Accordingly, the Court hereby grants Defendants’ motion to dismiss as unopposed,

and dismisses this case with prejudice for failure to prosecute. The Court declines to order sanctions against Plaintiff's counsel at this time. The Clerk of the Court is directed to close the case.

SO ORDERED.

s/ Leonard D. Wexler
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
May 29, 2014